

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JAMES S. HENDERSON,	)	
	)	
Claimant,	)	<b>IC 02-509450</b>
	)	
v.	)	<b>ORDER</b>
	)	
INTERNATIONAL BUSINESS	)	
MACHINES CORPORATION,	)	Filed
	)	February 17, 2005
Employer,	)	
	)	
and	)	
	)	
LIBERTY NORTHWEST FIRE	)	
INSURANCE COMPANY,	)	
	)	
Surety,	)	
	)	
and	)	
	)	
STATE OF IDAHO, INDUSTRIAL	)	
SPECIAL INDEMNITY FUND,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-717, Referee Robert D. Barclay submitted the record in the above-entitled matter, together with his findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with the

recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. Claimant is entitled to a permanent partial impairment (PPI) rating of 12.8% of the whole person for the May 2002 injury to his lumbar spine. Defendant Employer/Surety is entitled to credit for the PPI benefits previously paid Claimant.

2. Claimant is entitled to a permanent partial disability (PPD) rating of 80% of the whole person inclusive of his total PPI of 47% of the whole person. After apportionment under Idaho Code § 72-406, Defendant Employer/Surety is responsible for that portion of Claimant's PPD above PPI equating to 12.3% of the whole person.

3. Claimant has not demonstrated that he is an odd-lot worker under the *Lethrud* test.

4. Defendant ISIF is not liable to Claimant under Idaho Code § 72-332.

5. Apportionment under the *Carey* formula is moot.

6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to the matters adjudicated.

DATED This 17th day of February, 2005.

INDUSTRIAL COMMISSION

/s/  
Thomas E. Limbaugh, Chairman

/s/  
James F. Kile, Commissioner

/s/  
R. D. Maynard, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of February, 2005, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following:

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kkrr

/s/